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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,023

04/02/2004

Salvatore V. Pizzo

5405-304

2746

20792 7590 07/29/2009
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EXAMINER

LE, EMILY M

ART UNIT

PAPER NUMBER

1648

MAIL DATE

DELIVERY MODE

07/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/817,023	Applicant(s) PIZZO ET AL.	
	Examiner EMILY M. LE	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 16-20 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16-19 and 28-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/02/2009 has been entered.

Status of Claims

2. Claims 1-13, 15 and 21-27 are cancelled. Claims 29-35 are added. Claims 14, 16-20 and 28-35 are pending. Claim 20 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/04/2006. Claims 14, 16-19 and 28-35 are under examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 14, 16-19 and 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trinchieri et al.¹

The claims are directed to the administration of an immunogen with Compound 48/80, in a pharmaceutical carrier, to a subject to induce an immune response in the subject. Claim 16, which depends on claim 14, requires the administration be parenteral. Claims 17-19, which depend on claim 14, require the immune response to be prophylactic, therapeutic and humoral, respectively. Claim 28, which depends on claim 14, requires the administration be mucosal. Claims 29-34 are directed to the method of claims 14, 16, 28, 17-19, respectively.

Trinchieri et al. teaches the administration of an immunogen with Compound 48/80 to a subject to induce an immune response in the subject. [Claims 1 and 9, in particular.] Trinchieri et al. refers to Compound 48/80 as calmidazolium. Both Compound 48/80 and calmidazolium have the same CAS number, 94724-12-6.

Trinchieri et al. does not teach the inclusion of the immunogen and Compound 48/80 with a pharmaceutical carrier. However, Trinchieri et al. suggests the use of a pharmaceutically acceptable carrier to facilitate delivery/administration. It would have been prima facie obvious for one of ordinary skill in the art, at the time the invention was made, to include a pharmaceutically acceptable carrier with the composition of Trinchieri et al. One of ordinary skill in the art, at the time the invention was made, would have been motivated to do so to facilitate delivery and administration of the composition. One of ordinary skill in the art, at the time the invention was made, would

¹ Trinchieri et al. U.S. Patent No. 6375944, published April 23, 2002.

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have had a reasonable expectation of success for doing so because the use of pharmaceutically acceptable carrier is routinely practiced in the art.

It is noted that Trinchieri et al. does not teach either parenteral or mucosal administrations. However, at the time the invention it was made, it would have been prima facie obvious for one of ordinary skill in the art to administer the composition rendered obvious by Trinchieri et al. parenterally or mucosally. One of ordinary skill in the art, at the time the invention was made, would have been motivated to do so to facilitate administration of the composition. One of ordinary skill in the art, at the time the invention was made, would have had a reasonable expectation of success for doing so because the use of various administration protocol, including parenteral and mucosal, is routinely practiced in the art.

Conclusion

5. No claim is allowed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMILY M. LE whose telephone number is (571)272-0903. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EMILY M LE/
Primary Examiner, Art Unit 1648

/E. M. L./
Primary Examiner, Art Unit 1648